



August 22, 2002

Mr. K. Scott Oliver  
Assistant Criminal District Attorney  
Bexar County  
300 Dolorosa, Suite 4049  
San Antonio, Texas 78205-3030

OR2002-4678

Dear Mr. Oliver:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 167733.

The Bexar County District Attorney's Office (the "D.A.'s Office") received a request for the parking records for the judges in Bexar County Courts at Law 6, 9, and 11. The D.A.'s Office claims that the responsive information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted sample of information.<sup>1</sup>

Under section 552.101 of the Government Code,<sup>2</sup> this office has determined that information may be withheld from public disclosure in special circumstances. *See* Open Records Decision No. 169 (1977). We consider "special circumstances" to refer to a very narrow set of situations in which release of the information would likely cause an imminent threat of harm. *Id.* at 6. An assertion of a generalized and speculative fear of harm does not satisfy the "special circumstances" standard. *Id.* This office further noted that the initial determination of the existence of an imminent threat of harm should be made by the

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

<sup>2</sup>Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

governmental body to which a request for disclosure is directed, and this office will determine whether a governmental body has demonstrated the existence of special circumstances on a case-by-case basis. *Id.* at 7.

The D.A.'s Office submitted an affidavit from Deputy Chief Henry Martinez, who is charged with providing security for the Bexar County Courts at Law judges. Deputy Chief Martinez attests that certain individuals have made threats against the judges whose parking records are requested here. Furthermore, he explains that "release of these parking records pose a security issue in that the patterns and habits of the judges' arrivals and departures will be revealed. Providing this information results in an individual being able to plan an attack on the judges based upon these habits and patterns." Lastly, Deputy Chief Martinez opines that "release of this information . . . will present an imminent threat of physical danger or bodily harm to the individuals whose records were requested." After reviewing these arguments and the submitted information, we conclude that the D.A.'s Office has demonstrated the existence of special circumstances in this instance. Thus, the D.A.'s Office must withhold the requested information under section 552.101.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/sdk

Ref: ID# 167733

Enc. Submitted documents

c: Mr. Robert Vargas III  
215 Ardmore  
San Antonio, Texas 78237  
(w/o enclosures)